

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION**

**CHARLES R. MCCALLISTER**

**PLAINTIFF**

**V.**

**NO. 06-6037**

**MARTEN TRANSPORT, LTD.  
AND ALTON D. SPIGHT**

**DEFENDANTS**

**BRIEF IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

This claim arises from an incident in which Plaintiff was one of a team of two drivers operating a semi-tractor trailer rig traveling on I-30 in Hot Spring County, Arkansas in February 2006 when he was shot in the back by Defendant Alton Spight. Plaintiff's tractor trailer was passing a tractor trailer driven by Defendant Spight. This claim is before this court after removal from the Arkansas state courts upon the basis of diversity of citizenship.

As a result of the above-described event, Defendant Spight was convicted of in the Circuit Court of Hot Spring County, Arkansas of first degree battery. Spight appealed the verdict to the Arkansas Court of Appeals and the conviction was upheld on March 5, 2008. *Alton Spight v. State*, 101 Ark. App. 400, 2008 WL 598588 (Ark. App. 2008). Under Arkansas law, the conviction operates as a res judicata finding of fault in the ensuing civil case and Defendant is collaterally estopped from contesting his liability on this matter. *Zinger v. Terrell*, 336 Ark. 423, 985 S.W.2d 737 (1999). In *Zinger*, a life insurance company brought an interpleader action to determine to whom life insurance benefits should be paid. The beneficiary had been convicted of first-degree murder of the

insured. The Arkansas Supreme Court held that the criminal conviction precluded the beneficiary from relitigating her guilt for the murder.

This Court should issue a summary judgment on the issue of liability so that the only issues remaining to be decided by the jury are those of damages suffered by Plaintiff.

Wherefore, Plaintiff prays that this Court enter partial summary judgment and for all other proper relief.

Respectfully submitted,

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By: /s/  
Darryl E. Baker #78008

CERTIFICATE OF SERVICE

I, Darryl E. Baker, do hereby certify that a true copy of the above has been furnished to the defendant(s) by mailing a copy of same to the Attorney(s) as listed below on this 27th day of August, 2008, by

(X) regular mail ( ) certified mail ( ) hand delivery ( ) facsimile (X) email

/s/  
Darryl E. Baker

To:

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